

Exhibit E

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BIMBO BAKERIES USA, INC.

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 ALEX ANG and LYNN STREIT, individually)
14 and on behalf of all others similarly situated,)
15 Plaintiffs,)
16 v.)
17 BIMBO BAKERIES USA, INC.,)
18 Defendant.)
19)
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21)
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Case No. 13-CV-1196-HSG (NC)

**DEFENDANT'S RESPONSE TO
PLAINTIFFS' THIRD SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS**

1 PROPOUNDING PARTY: PLAINTIFFS ALEX ANG and LYNN STREIT

2 RESPONDING PARTY: DEFENDANT BIMBO BAKERIES USA, INC.

3 SET NO.: THREE

4
5 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, defendant Bimbo
6 Bakeries USA, Inc. ("BBUSA") hereby serves the following response and objection to the
7 plaintiffs' third set of requests for production of documents.

8 **GENERAL OBJECTIONS**

9 1. BBUSA objects to the definitions and instructions in the plaintiffs' requests for
10 production of documents to the extent that they exceed the requirements of the Federal Rules of
11 Civil Procedure.

12 2. BBUSA objects to the plaintiffs' requests to the extent that they purport to seek
13 information or documents protected from discovery or disclosure by the attorney-client privilege,
14 the attorney work product doctrine, the settlement or mediation privilege, the joint defense or
15 common interest doctrines or by any other applicable privilege, immunity or protective doctrine.
16 BBUSA intends to and does invoke these privileges and immunities with respect to all covered
17 information and documents and will not produce any information or documents subject to any of
18 them. Should BBUSA provide any privileged or protected information or documents during the
19 course of this litigation, unless expressly stated otherwise, such disclosure is inadvertent and shall
20 not constitute a waiver of any applicable privilege or immunity, or of any other ground for
21 objecting, or of BBUSA's right to object during this litigation or otherwise to the use of such
22 information or documents.

23 3. BBUSA objects to the plaintiffs' discovery requests to the extent that they seek
24 information or documents that, if disclosed, would violate third-party privacy rights or third-party
25 confidentiality rights (contractual, common law, statutory or otherwise) or any rights that prohibit
26 BBUSA from disclosing third-party information or documents without consent.

27 4. BBUSA objects to the plaintiffs' discovery requests to the extent that they purport
28 to require BBUSA to disclose information that is commercially sensitive, confidential, proprietary

1 and/or reflective of trade secrets, including, but not limited to, BBUSA's commercially sensitive,
2 confidential and proprietary information and information that is prohibited from disclosure by
3 contract, agreement, understanding, custom, trade usage, statute, regulation, privacy law and/or
4 any other provision of law.

5 5. BBUSA objects to the plaintiffs' discovery requests to the extent that they are
6 overbroad, unduly burdensome or seek the disclosure of information or documents neither
7 relevant to the subject matter of the pending action nor reasonably calculated to lead to the
8 discovery of admissible evidence in this action.

9 6. Discovery in this litigation is ongoing and BBUSA's responses are made only on
10 the basis of the information that is currently known or reasonably available to it. These responses
11 are made without prejudice to BBUSA's right to introduce additional evidence at the time of trial
12 or to supplement its responses, as appropriate, as discovery proceeds and after discovery has been
13 completed. BBUSA also reserves the right to make any use of, or to introduce in any hearing or
14 at trial, documents or information subsequently produced or disclosed in this action.

15 7. The disclosure of any documents or information by BBUSA in response to this
16 discovery is made subject to all objections as to competence, relevance, materiality, admissibility
17 and any other objections on any grounds that would require exclusion of the documents or
18 information, or any portion thereof, if such documents or information were offered into evidence.
19 BBUSA expressly reserves all such objections and grounds.

20 **RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

21 Subject to and without waiving the above General Objections, BBUSA hereby responds to
22 each request for production as follows:

23 **REQUEST NO. 1:**

24 All documents relating to differences between consumer interests, opinions, or preferences
25 in California and consumer interests, opinions, or preferences in any other part of the United
26 States.
27
28

RESPONSE TO REQUEST NO. 1:

BBUSA hereby incorporates the above General Objections as if stated herein in full. BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly burdensome and seeks documents that are neither relevant to the subject matter of the pending litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action because the documents that it seeks expressly are not limited in scope or time. In addition, because the plaintiffs are seeking to certify a California-only class of consumers, the named plaintiffs are California residents, and all claims are asserted under California law, any documents regarding the “interests, opinions or preferences” of non-California consumers are neither relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA also objects to this Request on the grounds that it seeks documents protected from disclosure by the attorney-client and/or attorney work product privileges.

Subject to and without waiving the foregoing objections, BBUSA responds as follows:

The plaintiffs’ first set of document requests in this matter, which they propounded in January 2014, contained 19 separate requests for documents related to (i) “consumer and marketing surveys, research, or analysis” concerning all of the products and labels at issue (*see* Request Nos. 32-38), (ii) “communications to and from consultants, experts, or specialists in the area of food labeling requirements (whether or not employed by Bimbo) concerning all of the products and labels at issue (*see* Request Nos. 41-46) and (iii) “actual, potential, estimated, or expected differences between consumer interest in or purchases of products that contain” and do not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the application of which was calculated to retrieve documents responsive to all of the foregoing requests. In accordance with those agreements, BBUSA undertook the very time-consuming and expensive task of gathering, processing and producing all responsive documents from its nationwide electronic databases and the agreed-upon custodians (BBUSA’s search was not geographically limited). All such documents have either been produced or withheld as privileged.

1 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
2 set of document requests and the agreed-upon e-discovery search terms already employed by
3 BBUSA would have captured all documents that are responsive to this request, BBUSA has
4 already produced any non-privileged documents responsive to this request.

5 **REQUEST NO. 2:**

6 All documents discussing any differences between consumer interests, opinions, or
7 preferences in California and consumer interests, opinions, or preferences in any other part of the
8 United States.

9 **RESPONSE TO REQUEST NO. 2:**

10 BBUSA hereby incorporates the above General Objections as if stated herein in full.
11 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
12 burdensome and seeks documents that are neither relevant to the subject matter of the pending
13 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
14 because the documents that it seeks expressly are not limited in scope or time. In addition,
15 because the plaintiffs are seeking to certify a California-only class of consumers, the named
16 plaintiffs are California residents, and all claims are asserted under California law, any documents
17 regarding the "interests, opinions or preferences" of non-California consumers are neither
18 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
19 also objects to this Request on the grounds that it seeks documents protected from disclosure by
20 the attorney-client and/or attorney work product privileges.

21 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

22 The plaintiffs' first set of document requests in this matter, which they propounded in
23 January 2014, contained 19 separate requests for documents related to (i) "consumer and
24 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
25 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
26 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
27 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
28 expected differences between consumer interest in or purchases of products that contain" and do

1 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
2 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
3 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
4 application of which was calculated to retrieve documents responsive to all of the foregoing
5 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
6 expensive task of gathering, processing and producing all responsive documents from its
7 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
8 geographically limited). All such documents have either been produced or withheld as privileged.

9 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
10 set of document requests and the agreed-upon e-discovery search terms already employed by
11 BBUSA would have captured all documents that are responsive to this request, BBUSA has
12 already produced any non-privileged documents responsive to this request.

13 **REQUEST NO. 3:**

14 All documents relating to similarities between consumer interests, opinions, or
15 preferences in California and consumer interests, opinions, or preferences in any other part of the
16 United States.

17 **RESPONSE TO REQUEST NO. 3:**

18 BBUSA hereby incorporates the above General Objections as if stated herein in full.
19 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
20 burdensome and seeks documents that are neither relevant to the subject matter of the pending
21 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
22 because the documents that it seeks expressly are not limited in scope or time. In addition,
23 because the plaintiffs are seeking to certify a California-only class of consumers, the named
24 plaintiffs are California residents, and all claims are asserted under California law, any documents
25 regarding the "interests, opinions or preferences" of non-California consumers are neither
26 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
27 also objects to this Request on the grounds that it seeks documents protected from disclosure by
28 the attorney-client and/or attorney work product privileges.

1 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

2 The plaintiffs' first set of document requests in this matter, which they propounded in
3 January 2014, contained 19 separate requests for documents related to (i) "consumer and
4 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
5 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
6 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
7 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
8 expected differences between consumer interest in or purchases of products that contain" and do
9 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
10 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
11 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
12 application of which was calculated to retrieve documents responsive to all of the foregoing
13 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
14 expensive task of gathering, processing and producing all responsive documents from its
15 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
16 geographically limited). All such documents have either been produced or withheld as privileged.

17 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
18 set of document requests and the agreed-upon e-discovery search terms already employed by
19 BBUSA would have captured all documents that are responsive to this request, BBUSA has
20 already produced any non-privileged documents responsive to this request.

21 **REQUEST NO. 4:**

22 All documents discussing any similarities between consumer interests, opinions, or
23 preferences in California and consumer interests, opinions, or preferences in any other part of the
24 United States.

25 **RESPONSE TO REQUEST NO. 4:**

26 BBUSA hereby incorporates the above General Objections as if stated herein in full.
27 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
28 burdensome and seeks documents that are neither relevant to the subject matter of the pending

1 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
2 because the documents that it seeks expressly are not limited in scope or time. In addition,
3 because the plaintiffs are seeking to certify a California-only class of consumers, the named
4 plaintiffs are California residents, and all claims are asserted under California law, any documents
5 regarding the “interests, opinions or preferences” of non-California consumers are neither
6 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
7 also objects to this Request on the grounds that it seeks documents protected from disclosure by
8 the attorney-client and/or attorney work product privileges.

9 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

10 The plaintiffs’ first set of document requests in this matter, which they propounded in
11 January 2014, contained 19 separate requests for documents related to (i) “consumer and
12 marketing surveys, research, or analysis” concerning all of the products and labels at issue (*see*
13 Request Nos. 32-38), (ii) “communications to and from consultants, experts, or specialists in the
14 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
15 products and labels at issue (*see* Request Nos. 41-46) and (iii) “actual, potential, estimated, or
16 expected differences between consumer interest in or purchases of products that contain” and do
17 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
18 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
19 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
20 application of which was calculated to retrieve documents responsive to all of the foregoing
21 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
22 expensive task of gathering, processing and producing all responsive documents from its
23 nationwide electronic databases and the agreed-upon custodians (BBUSA’s search was not
24 geographically limited). All such documents have either been produced or withheld as privileged.

25 Because this request is duplicative of the above-referenced requests in the plaintiffs’ first
26 set of document requests and the agreed-upon e-discovery search terms already employed by
27 BBUSA would have captured all documents that are responsive to this request, BBUSA has
28 already produced any non-privileged documents responsive to this request.

REQUEST NO. 5:

All documents specifically relating to consumer interests, opinions, or preferences in California.

RESPONSE TO REQUEST NO. 5:

BBUSA hereby incorporates the above General Objections as if stated herein in full. BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly burdensome and seeks documents that are neither relevant to the subject matter of the pending litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action because the documents that it seeks expressly are not limited in scope or time. BBUSA also objects to this Request on the grounds that it seeks documents protected from disclosure by the attorney-client and/or attorney work product privileges.

Subject to and without waiving the foregoing objections, BBUSA responds as follows:

The plaintiffs' first set of document requests in this matter, which they propounded in January 2014, contained 19 separate requests for documents related to (i) "consumer and marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see* Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the area of food labeling requirements (whether or not employed by Bimbo) concerning all of the products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or expected differences between consumer interest in or purchases of products that contain" and do not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the application of which was calculated to retrieve documents responsive to all of the foregoing requests. In accordance with those agreements, BBUSA undertook the very time-consuming and expensive task of gathering, processing and producing all responsive documents from its nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not geographically limited). All such documents have either been produced or withheld as privileged.

1 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
2 set of document requests and the agreed-upon e-discovery search terms already employed by
3 BBUSA would have captured all documents that are responsive to this request, BBUSA has
4 already produced any non-privileged documents responsive to this request.

5 **REQUEST NO. 6:**

6 All documents pertaining to any efforts by Bimbo to market or advertise products in
7 California in a different manner than in another part of the country.

8 **RESPONSE TO REQUEST NO. 6:**

9 BBUSA hereby incorporates the above General Objections as if stated herein in full.
10 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
11 burdensome and seeks documents that are neither relevant to the subject matter of the pending
12 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
13 because the documents that it seeks expressly are not limited in scope or time. In addition,
14 because the plaintiffs are seeking to certify a California-only class of consumers, the named
15 plaintiffs are California residents, and all claims are asserted under California law, any documents
16 regarding marketing or advertising outside of California are neither relevant nor reasonably
17 calculated to lead to the discovery of admissible information. BBUSA also objects to this
18 Request on the grounds that it seeks documents protected from disclosure by the attorney-client
19 and/or attorney work product privileges.

20 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

21 The plaintiffs' first set of document requests in this matter, which they propounded in
22 January 2014, contained 19 separate requests for documents related to (i) "consumer and
23 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
24 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
25 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
26 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
27 expected differences between consumer interest in or purchases of products that contain" and do
28 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties

1 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
2 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
3 application of which was calculated to retrieve documents responsive to all of the foregoing
4 requests. Indeed, the search terms were even broader than the foregoing requests, as they
5 included terms such as “advertise,” “market,” “purchase,” “demand,” “sales” and every possible
6 iteration thereof. In accordance with those agreements, BBUSA undertook the very time-
7 consuming and expensive task of gathering, processing and producing all responsive documents
8 from its nationwide electronic databases and the agreed-upon custodians (BBUSA’s search was
9 not geographically limited). All such documents have either been produced or withheld as
10 privileged.

11 Because this request is duplicative of the above-referenced requests in the plaintiffs’ first
12 set of document requests and the agreed-upon e-discovery search terms already employed by
13 BBUSA would have captured all documents that are responsive to this request, BBUSA has
14 already produced any non-privileged documents responsive to this request.

15 **REQUEST NO. 7:**

16 All documents relating to differences between consumer interests, opinions, or
17 preferences regarding the Purchased Products and Substantially Similar Products in California
18 and consumer interests, opinions, or preferences regarding the Purchased Products and
19 Substantially Similar Products in any other part of the United States.

20 **RESPONSE TO REQUEST NO. 7:**

21 BBUSA hereby incorporates the above General Objections as if stated herein in full.
22 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
23 burdensome and seeks documents that are neither relevant to the subject matter of the pending
24 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
25 because the documents that it seeks expressly are not limited in scope or time. In addition,
26 because the plaintiffs are seeking to certify a California-only class of consumers, the named
27 plaintiffs are California residents, and all claims are asserted under California law, any documents
28 regarding the “interests, opinions or preferences” of non-California consumers are neither

1 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
2 also objects to this Request on the grounds that it seeks documents protected from disclosure by
3 the attorney-client and/or attorney work product privileges.

4 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

5 The plaintiffs' first set of document requests in this matter, which they propounded in
6 January 2014, contained 19 separate requests for documents related to (i) "consumer and
7 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
8 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
9 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
10 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
11 expected differences between consumer interest in or purchases of products that contain" and do
12 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
13 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
14 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
15 application of which was calculated to retrieve documents responsive to all of the foregoing
16 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
17 expensive task of gathering, processing and producing all responsive documents from its
18 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
19 geographically limited). All such documents have either been produced or withheld as privileged.

20 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
21 set of document requests and the agreed-upon e-discovery search terms already employed by
22 BBUSA would have captured all documents that are responsive to this request, BBUSA has
23 already produced any non-privileged documents responsive to this request.

24 **REQUEST NO. 8:**

25 All documents discussing any differences between consumer interests, opinions, or
26 preferences regarding the Purchased Products and Substantially Similar Products in California
27 and consumer interests, opinions, or preferences regarding the Purchased Products and
28 Substantially Similar Products in any other part of the United States.

RESPONSE TO REQUEST NO. 8:

BBUSA hereby incorporates the above General Objections as if stated herein in full. BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly burdensome and seeks documents that are neither relevant to the subject matter of the pending litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action because the documents that it seeks expressly are not limited in scope or time. In addition, because the plaintiffs are seeking to certify a California-only class of consumers, the named plaintiffs are California residents, and all claims are asserted under California law, any documents regarding the “interests, opinions or preferences” of non-California consumers are neither relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA also objects to this Request on the grounds that it seeks documents protected from disclosure by the attorney-client and/or attorney work product privileges.

Subject to and without waiving the foregoing objections, BBUSA responds as follows:

The plaintiffs’ first set of document requests in this matter, which they propounded in January 2014, contained 19 separate requests for documents related to (i) “consumer and marketing surveys, research, or analysis” concerning all of the products and labels at issue (*see* Request Nos. 32-38), (ii) “communications to and from consultants, experts, or specialists in the area of food labeling requirements (whether or not employed by Bimbo) concerning all of the products and labels at issue (*see* Request Nos. 41-46) and (iii) “actual, potential, estimated, or expected differences between consumer interest in or purchases of products that contain” and do not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the application of which was calculated to retrieve documents responsive to all of the foregoing requests. In accordance with those agreements, BBUSA undertook the very time-consuming and expensive task of gathering, processing and producing all responsive documents from its nationwide electronic databases and the agreed-upon custodians (BBUSA’s search was not geographically limited). All such documents have either been produced or withheld as privileged.

1 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
2 set of document requests and the agreed-upon e-discovery search terms already employed by
3 BBUSA would have captured all documents that are responsive to this request, BBUSA has
4 already produced any non-privileged documents responsive to this request.

5 **REQUEST NO. 9:**

6 All documents relating to similarities between consumer interests, opinions, or
7 preferences regarding the Purchased Products and Substantially Similar Products in California
8 and consumer interests, opinions, or preferences regarding the Purchased Products and
9 Substantially Similar Products in any other part of the United States.

10 **RESPONSE TO REQUEST NO. 9:**

11 BBUSA hereby incorporates the above General Objections as if stated herein in full.
12 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
13 burdensome and seeks documents that are neither relevant to the subject matter of the pending
14 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
15 because the documents that it seeks expressly are not limited in scope or time. In addition,
16 because the plaintiffs are seeking to certify a California-only class of consumers, the named
17 plaintiffs are California residents, and all claims are asserted under California law, any documents
18 regarding the "interests, opinions or preferences" of non-California consumers are neither
19 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
20 also objects to this Request on the grounds that it seeks documents protected from disclosure by
21 the attorney-client and/or attorney work product privileges.

22 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

23 The plaintiffs' first set of document requests in this matter, which they propounded in
24 January 2014, contained 19 separate requests for documents related to (i) "consumer and
25 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
26 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
27 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
28 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or

1 expected differences between consumer interest in or purchases of products that contain” and do
2 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
3 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
4 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
5 application of which was calculated to retrieve documents responsive to all of the foregoing
6 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
7 expensive task of gathering, processing and producing all responsive documents from its
8 nationwide electronic databases and the agreed-upon custodians (BBUSA’s search was not
9 geographically limited). All such documents have either been produced or withheld as privileged.

10 Because this request is duplicative of the above-referenced requests in the plaintiffs’ first
11 set of document requests and the agreed-upon e-discovery search terms already employed by
12 BBUSA would have captured all documents that are responsive to this request, BBUSA has
13 already produced any non-privileged documents responsive to this request.

14 **REQUEST NO. 10:**

15 All documents discussing any similarities between consumer interests, opinions, or
16 preferences regarding the Purchased Products and Substantially Similar Products in California
17 and consumer interests, opinions, or preferences regarding the Purchased Products and
18 Substantially Similar Products in any other part of the United States.

19 **RESPONSE TO REQUEST NO. 10:**

20 BBUSA hereby incorporates the above General Objections as if stated herein in full.
21 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
22 burdensome and seeks documents that are neither relevant to the subject matter of the pending
23 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
24 because the documents that it seeks expressly are not limited in scope or time. In addition,
25 because the plaintiffs are seeking to certify a California-only class of consumers, the named
26 plaintiffs are California residents, and all claims are asserted under California law, any documents
27 regarding the “interests, opinions or preferences” of non-California consumers are neither
28 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA

1 also objects to this Request on the grounds that it seeks documents protected from disclosure by
2 the attorney-client and/or attorney work product privileges.

3 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

4 The plaintiffs' first set of document requests in this matter, which they propounded in
5 January 2014, contained 19 separate requests for documents related to (i) "consumer and
6 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
7 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
8 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
9 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
10 expected differences between consumer interest in or purchases of products that contain" and do
11 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
12 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
13 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
14 application of which was calculated to retrieve documents responsive to all of the foregoing
15 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
16 expensive task of gathering, processing and producing all responsive documents from its
17 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
18 geographically limited). All such documents have either been produced or withheld as privileged.

19 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
20 set of document requests and the agreed-upon e-discovery search terms already employed by
21 BBUSA would have captured all documents that are responsive to this request, BBUSA has
22 already produced any non-privileged documents responsive to this request.

23 **REQUEST NO. 11:**

24 All documents specifically relating to consumer interests, opinions, or preferences
25 regarding the Purchased Products and Substantially Similar Products in California.

26 **RESPONSE TO REQUEST NO. 11:**

27 BBUSA hereby incorporates the above General Objections as if stated herein in full.
28 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly

1 burdensome and seeks documents that are neither relevant to the subject matter of the pending
2 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
3 because the documents that it seeks expressly are not limited in scope or time. BBUSA also
4 objects to this Request on the grounds that it seeks documents protected from disclosure by the
5 attorney-client and/or attorney work product privileges.

6 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

7 The plaintiffs' first set of document requests in this matter, which they propounded in
8 January 2014, contained 19 separate requests for documents related to (i) "consumer and
9 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
10 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
11 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
12 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
13 expected differences between consumer interest in or purchases of products that contain" and do
14 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
15 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
16 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
17 application of which was calculated to retrieve documents responsive to all of the foregoing
18 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
19 expensive task of gathering, processing and producing all responsive documents from its
20 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
21 geographically limited). All such documents have either been produced or withheld as privileged.

22 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
23 set of document requests and the agreed-upon e-discovery search terms already employed by
24 BBUSA would have captured all documents that are responsive to this request, BBUSA has
25 already produced any non-privileged documents responsive to this request.

26 **REQUEST NO. 12:**

27 All documents pertaining to any efforts by Bimbo to market or advertise the Purchased
28 Products and Substantially Similar Products in California in a different manner than in another

1 part of the country.

2 **RESPONSE TO REQUEST NO. 12:**

3 BBUSA hereby incorporates the above General Objections as if stated herein in full.
4 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
5 burdensome and seeks documents that are neither relevant to the subject matter of the pending
6 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
7 because the documents that it seeks expressly are not limited in scope or time. In addition,
8 because the plaintiffs are seeking to certify a California-only class of consumers, the named
9 plaintiffs are California residents, and all claims are asserted under California law, any documents
10 regarding marketing or advertising outside of California are neither relevant nor reasonably
11 calculated to lead to the discovery of admissible information. BBUSA also objects to this
12 Request on the grounds that it seeks documents protected from disclosure by the attorney-client
13 and/or attorney work product privileges.

14 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

15 The plaintiffs' first set of document requests in this matter, which they propounded in
16 January 2014, contained 19 separate requests for documents related to (i) "consumer and
17 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
18 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
19 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
20 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
21 expected differences between consumer interest in or purchases of products that contain" and do
22 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
23 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
24 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
25 application of which was calculated to retrieve documents responsive to all of the foregoing
26 requests. Indeed, the search terms were even broader than the foregoing requests, as they
27 included terms such as "advertise," "market," "purchase," "demand," "sales" and every possible
28 iteration thereof. In accordance with those agreements, BBUSA undertook the very time-

1 consuming and expensive task of gathering, processing and producing all responsive documents
2 from its nationwide electronic databases and the agreed-upon custodians (BBUSA's search was
3 not geographically limited). All such documents have either been produced or withheld as
4 privileged.

5 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
6 set of document requests and the agreed-upon e-discovery search terms already employed by
7 BBUSA would have captured all documents that are responsive to this request, BBUSA has
8 already produced any non-privileged documents responsive to this request.

9 **REQUEST NO. 13:**

10 All documents relating to differences between consumer interests, opinions, or
11 preferences regarding the labeling of products with the American Heart Association Heart-Check
12 Mark or the phrases "good source of whole grain," "excellent source of whole grain," or "100%
13 Whole Wheat" in California and consumer interests, opinions, or preferences regarding such
14 labeling in any other part of the United States.

15 **RESPONSE TO REQUEST NO. 13:**

16 BBUSA hereby incorporates the above General Objections as if stated herein in full.
17 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
18 burdensome and seeks documents that are neither relevant to the subject matter of the pending
19 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
20 because the documents that it seeks expressly are not limited in scope or time. In addition,
21 because the plaintiffs are seeking to certify a California-only class of consumers, the named
22 plaintiffs are California residents, and all claims are asserted under California law, any documents
23 regarding the "interests, opinions or preferences" of non-California consumers are neither
24 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
25 also objects to this Request on the grounds that it seeks documents protected from disclosure by
26 the attorney-client and/or attorney work product privileges.

27 Subject to and without waiving the foregoing objections, BBUSA responds as follows:
28

1 The plaintiffs' first set of document requests in this matter, which they propounded in
 2 January 2014, contained 19 separate requests for documents related to (i) "consumer and
 3 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
 4 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
 5 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
 6 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
 7 expected differences between consumer interest in or purchases of products that contain" and do
 8 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
 9 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
 10 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
 11 application of which was calculated to retrieve documents responsive to all of the foregoing
 12 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
 13 expensive task of gathering, processing and producing all responsive documents from its
 14 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
 15 geographically limited). All such documents have either been produced or withheld as privileged.

16 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
 17 set of document requests and the agreed-upon e-discovery search terms already employed by
 18 BBUSA would have captured all documents that are responsive to this request, BBUSA has
 19 already produced any non-privileged documents responsive to this request.

20 **REQUEST NO. 14:**

21 All documents discussing any differences between consumer interests, opinions, or
 22 preferences regarding the labeling of products with the American Heart Association Heart-Check
 23 Mark or the phrases "good source of whole grain," "excellent source of whole grain," or "100%
 24 Whole Wheat" in California and consumer interests, opinions, or preferences regarding such
 25 labeling in any other part of the United States.

26 **RESPONSE TO REQUEST NO. 14:**

27 BBUSA hereby incorporates the above General Objections as if stated herein in full.
 28 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly

1 burdensome and seeks documents that are neither relevant to the subject matter of the pending
2 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
3 because the documents that it seeks expressly are not limited in scope or time. In addition,
4 because the plaintiffs are seeking to certify a California-only class of consumers, the named
5 plaintiffs are California residents, and all claims are asserted under California law, any documents
6 regarding the “interests, opinions or preferences” of non-California consumers are neither
7 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
8 also objects to this Request on the grounds that it seeks documents protected from disclosure by
9 the attorney-client and/or attorney work product privileges.

10 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

11 The plaintiffs’ first set of document requests in this matter, which they propounded in
12 January 2014, contained 19 separate requests for documents related to (i) “consumer and
13 marketing surveys, research, or analysis” concerning all of the products and labels at issue (*see*
14 Request Nos. 32-38), (ii) “communications to and from consultants, experts, or specialists in the
15 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
16 products and labels at issue (*see* Request Nos. 41-46) and (iii) “actual, potential, estimated, or
17 expected differences between consumer interest in or purchases of products that contain” and do
18 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
19 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
20 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
21 application of which was calculated to retrieve documents responsive to all of the foregoing
22 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
23 expensive task of gathering, processing and producing all responsive documents from its
24 nationwide electronic databases and the agreed-upon custodians (BBUSA’s search was not
25 geographically limited). All such documents have either been produced or withheld as privileged.

26 Because this request is duplicative of the above-referenced requests in the plaintiffs’ first
27 set of document requests and the agreed-upon e-discovery search terms already employed by
28

1 BBUSA would have captured all documents that are responsive to this request, BBUSA has
2 already produced any non-privileged documents responsive to this request.

3 **REQUEST NO. 15:**

4 All documents relating to similarities between consumer interests, opinions, or
5 preferences regarding the labeling of products with the American Heart Association Heart-Check
6 Mark or the phrases “good source of whole grain,” “excellent source of whole grain,” or “100%
7 Whole Wheat” in California and consumer interests, opinions, or preferences regarding such
8 labeling in any other part of the United States.

9 **RESPONSE TO REQUEST NO. 15:**

10 BBUSA hereby incorporates the above General Objections as if stated herein in full.
11 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
12 burdensome and seeks documents that are neither relevant to the subject matter of the pending
13 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
14 because the documents that it seeks expressly are not limited in scope or time. In addition,
15 because the plaintiffs are seeking to certify a California-only class of consumers, the named
16 plaintiffs are California residents, and all claims are asserted under California law, any documents
17 regarding the “interests, opinions or preferences” of non-California consumers are neither
18 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
19 also objects to this Request on the grounds that it seeks documents protected from disclosure by
20 the attorney-client and/or attorney work product privileges.

21 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

22 The plaintiffs’ first set of document requests in this matter, which they propounded in
23 January 2014, contained 19 separate requests for documents related to (i) “consumer and
24 marketing surveys, research, or analysis” concerning all of the products and labels at issue (*see*
25 Request Nos. 32-38), (ii) “communications to and from consultants, experts, or specialists in the
26 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
27 products and labels at issue (*see* Request Nos. 41-46) and (iii) “actual, potential, estimated, or
28 expected differences between consumer interest in or purchases of products that contain” and do

1 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
2 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
3 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
4 application of which was calculated to retrieve documents responsive to all of the foregoing
5 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
6 expensive task of gathering, processing and producing all responsive documents from its
7 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
8 geographically limited). All such documents have either been produced or withheld as privileged.

9 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
10 set of document requests and the agreed-upon e-discovery search terms already employed by
11 BBUSA would have captured all documents that are responsive to this request, BBUSA has
12 already produced any non-privileged documents responsive to this request.

13 **REQUEST NO. 16:**

14 All documents discussing any similarities between consumer interests, opinions, or
15 preferences regarding the labeling of products with the American Heart Association Heart-Check
16 Mark or the phrases "good source of whole grain," "excellent source of whole grain," or "100%
17 Whole Wheat" in California and consumer interests, opinions, or preferences regarding such
18 labeling in any other part of the United States.

19 **RESPONSE TO REQUEST NO. 16:**

20 BBUSA hereby incorporates the above General Objections as if stated herein in full.
21 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
22 burdensome and seeks documents that are neither relevant to the subject matter of the pending
23 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
24 because the documents that it seeks expressly are not limited in scope or time. In addition,
25 because the plaintiffs are seeking to certify a California-only class of consumers, the named
26 plaintiffs are California residents, and all claims are asserted under California law, any documents
27 regarding the "interests, opinions or preferences" of non-California consumers are neither
28 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA

1 also objects to this Request on the grounds that it seeks documents protected from disclosure by
2 the attorney-client and/or attorney work product privileges.

3 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

4 The plaintiffs' first set of document requests in this matter, which they propounded in
5 January 2014, contained 19 separate requests for documents related to (i) "consumer and
6 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
7 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
8 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
9 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
10 expected differences between consumer interest in or purchases of products that contain" and do
11 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
12 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
13 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
14 application of which was calculated to retrieve documents responsive to all of the foregoing
15 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
16 expensive task of gathering, processing and producing all responsive documents from its
17 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
18 geographically limited). All such documents have either been produced or withheld as privileged.

19 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
20 set of document requests and the agreed-upon e-discovery search terms already employed by
21 BBUSA would have captured all documents that are responsive to this request, BBUSA has
22 already produced any non-privileged documents responsive to this request.

23 **REQUEST NO. 17:**

24 All documents specifically relating to consumer interests, opinions, or preferences
25 regarding the labeling of products with the American Heart Association Heart-Check Mark or the
26 phrases "good source of whole grain," "excellent source of whole grain," or "100% Whole
27 Wheat" in California.
28

1 **RESPONSE TO REQUEST NO. 17:**

2 BBUSA hereby incorporates the above General Objections as if stated herein in full.
 3 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
 4 burdensome and seeks documents that are neither relevant to the subject matter of the pending
 5 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
 6 because the documents that it seeks expressly are not limited in scope or time. BBUSA also
 7 objects to this Request on the grounds that it seeks documents protected from disclosure by the
 8 attorney-client and/or attorney work product privileges.

9 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

10 The plaintiffs' first set of document requests in this matter, which they propounded in
 11 January 2014, contained 19 separate requests for documents related to (i) "consumer and
 12 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
 13 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
 14 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
 15 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
 16 expected differences between consumer interest in or purchases of products that contain" and do
 17 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
 18 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
 19 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
 20 application of which was calculated to retrieve documents responsive to all of the foregoing
 21 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
 22 expensive task of gathering, processing and producing all responsive documents from its
 23 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
 24 geographically limited). All such documents have either been produced or withheld as privileged.

25 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
 26 set of document requests and the agreed-upon e-discovery search terms already employed by
 27 BBUSA would have captured all documents that are responsive to this request, BBUSA has
 28 already produced any non-privileged documents responsive to this request.

REQUEST NO. 18:

All documents pertaining to any efforts by Bimbo to market or advertise products labeled with the American Heart Association Heart-Check Mark or the phrases “good source of whole grain,” “excellent source of whole grain,” or “100% Whole Wheat” in California in a different manner than in another part of the country.

RESPONSE TO REQUEST NO. 18:

BBUSA hereby incorporates the above General Objections as if stated herein in full. BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly burdensome and seeks documents that are neither relevant to the subject matter of the pending litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action because the documents that it seeks expressly are not limited in scope or time. In addition, because the plaintiffs are seeking to certify a California-only class of consumers, the named plaintiffs are California residents, and all claims are asserted under California law, any documents regarding marketing or advertising outside of California are neither relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA also objects to this Request on the grounds that it seeks documents protected from disclosure by the attorney-client and/or attorney work product privileges.

Subject to and without waiving the foregoing objections, BBUSA responds as follows:

The plaintiffs’ first set of document requests in this matter, which they propounded in January 2014, contained 19 separate requests for documents related to (i) “consumer and marketing surveys, research, or analysis” concerning all of the products and labels at issue (*see* Request Nos. 32-38), (ii) “communications to and from consultants, experts, or specialists in the area of food labeling requirements (whether or not employed by Bimbo) concerning all of the products and labels at issue (*see* Request Nos. 41-46) and (iii) “actual, potential, estimated, or expected differences between consumer interest in or purchases of products that contain” and do not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the

1 application of which was calculated to retrieve documents responsive to all of the foregoing
2 requests. Indeed, the search terms were even broader than the foregoing requests, as they
3 included terms such as “advertise,” “market,” “purchase,” “demand,” “sales” and every possible
4 iteration thereof. In accordance with those agreements, BBUSA undertook the very time-
5 consuming and expensive task of gathering, processing and producing all responsive documents
6 from its nationwide electronic databases and the agreed-upon custodians (BBUSA’s search was
7 not geographically limited). All such documents have either been produced or withheld as
8 privileged.

9 Because this request is duplicative of the above-referenced requests in the plaintiffs’ first
10 set of document requests and the agreed-upon e-discovery search terms already employed by
11 BBUSA would have captured all documents that are responsive to this request, BBUSA has
12 already produced any non-privileged documents responsive to this request.

13 **REQUEST NO. 19:**

14 All documents relating to differences between consumer interests, opinions, or
15 preferences regarding bread products with added coloring in California and bread products with
16 added coloring in any other part of the United States.

17 **RESPONSE TO REQUEST NO. 19:**

18 BBUSA hereby incorporates the above General Objections as if stated herein in full.
19 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
20 burdensome and seeks documents that are neither relevant to the subject matter of the pending
21 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
22 because the documents that it seeks expressly are not limited in scope or time. In addition,
23 because the plaintiffs are seeking to certify a California-only class of consumers, the named
24 plaintiffs are California residents, and all claims are asserted under California law, any documents
25 regarding the “interests, opinions or preferences” of non-California consumers are neither
26 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
27 also objects to this Request on the grounds that it seeks documents protected from disclosure by
28 the attorney-client and/or attorney work product privileges.

1 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

2 The plaintiffs' first set of document requests in this matter, which they propounded in
3 January 2014, contained 19 separate requests for documents related to (i) "consumer and
4 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
5 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
6 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
7 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
8 expected differences between consumer interest in or purchases of products that contain" and do
9 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
10 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
11 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
12 application of which was calculated to retrieve documents responsive to all of the foregoing
13 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
14 expensive task of gathering, processing and producing all responsive documents from its
15 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
16 geographically limited). All such documents have either been produced or withheld as privileged.

17 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
18 set of document requests and the agreed-upon e-discovery search terms already employed by
19 BBUSA would have captured all documents that are responsive to this request, BBUSA has
20 already produced any non-privileged documents responsive to this request.

21 **REQUEST NO. 20:**

22 All documents discussing any differences between consumer interests, opinions, or
23 preferences regarding bread products with added coloring in California and bread products with
24 added coloring in any other part of the United States.

25 **RESPONSE TO REQUEST NO. 20:**

26 BBUSA hereby incorporates the above General Objections as if stated herein in full.
27 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
28 burdensome and seeks documents that are neither relevant to the subject matter of the pending

1 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
2 because the documents that it seeks expressly are not limited in scope or time. In addition,
3 because the plaintiffs are seeking to certify a California-only class of consumers, the named
4 plaintiffs are California residents, and all claims are asserted under California law, any documents
5 regarding the “interests, opinions or preferences” of non-California consumers are neither
6 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
7 also objects to this Request on the grounds that it seeks documents protected from disclosure by
8 the attorney-client and/or attorney work product privileges.

9 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

10 The plaintiffs’ first set of document requests in this matter, which they propounded in
11 January 2014, contained 19 separate requests for documents related to (i) “consumer and
12 marketing surveys, research, or analysis” concerning all of the products and labels at issue (*see*
13 Request Nos. 32-38), (ii) “communications to and from consultants, experts, or specialists in the
14 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
15 products and labels at issue (*see* Request Nos. 41-46) and (iii) “actual, potential, estimated, or
16 expected differences between consumer interest in or purchases of products that contain” and do
17 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
18 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
19 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
20 application of which was calculated to retrieve documents responsive to all of the foregoing
21 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
22 expensive task of gathering, processing and producing all responsive documents from its
23 nationwide electronic databases and the agreed-upon custodians (BBUSA’s search was not
24 geographically limited). All such documents have either been produced or withheld as privileged.

25 Because this request is duplicative of the above-referenced requests in the plaintiffs’ first
26 set of document requests and the agreed-upon e-discovery search terms already employed by
27 BBUSA would have captured all documents that are responsive to this request, BBUSA has
28 already produced any non-privileged documents responsive to this request.

REQUEST NO. 21:

All documents relating to similarities between consumer interests, opinions, or preferences regarding bread products with added coloring in California and bread products with added coloring in any other part of the United States.

RESPONSE TO REQUEST NO. 21:

BBUSA hereby incorporates the above General Objections as if stated herein in full. BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly burdensome and seeks documents that are neither relevant to the subject matter of the pending litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action because the documents that it seeks expressly are not limited in scope or time. In addition, because the plaintiffs are seeking to certify a California-only class of consumers, the named plaintiffs are California residents, and all claims are asserted under California law, any documents regarding the “interests, opinions or preferences” of non-California consumers are neither relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA also objects to this Request on the grounds that it seeks documents protected from disclosure by the attorney-client and/or attorney work product privileges.

Subject to and without waiving the foregoing objections, BBUSA responds as follows:

The plaintiffs’ first set of document requests in this matter, which they propounded in January 2014, contained 19 separate requests for documents related to (i) “consumer and marketing surveys, research, or analysis” concerning all of the products and labels at issue (*see* Request Nos. 32-38), (ii) “communications to and from consultants, experts, or specialists in the area of food labeling requirements (whether or not employed by Bimbo) concerning all of the products and labels at issue (*see* Request Nos. 41-46) and (iii) “actual, potential, estimated, or expected differences between consumer interest in or purchases of products that contain” and do not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the application of which was calculated to retrieve documents responsive to all of the foregoing

1 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
2 expensive task of gathering, processing and producing all responsive documents from its
3 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
4 geographically limited). All such documents have either been produced or withheld as privileged.

5 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
6 set of document requests and the agreed-upon e-discovery search terms already employed by
7 BBUSA would have captured all documents that are responsive to this request, BBUSA has
8 already produced any non-privileged documents responsive to this request.

9 **REQUEST NO. 22:**

10 All documents discussing any similarities between consumer interests, opinions, or
11 preferences regarding bread products with added coloring in California and bread products with
12 added coloring in any other part of the United States.

13 **RESPONSE TO REQUEST NO. 22:**

14 BBUSA hereby incorporates the above General Objections as if stated herein in full.
15 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
16 burdensome and seeks documents that are neither relevant to the subject matter of the pending
17 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
18 because the documents that it seeks expressly are not limited in scope or time. In addition,
19 because the plaintiffs are seeking to certify a California-only class of consumers, the named
20 plaintiffs are California residents, and all claims are asserted under California law, any documents
21 regarding the "interests, opinions or preferences" of non-California consumers are neither
22 relevant nor reasonably calculated to lead to the discovery of admissible information. BBUSA
23 also objects to this Request on the grounds that it seeks documents protected from disclosure by
24 the attorney-client and/or attorney work product privileges.

25 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

26 The plaintiffs' first set of document requests in this matter, which they propounded in
27 January 2014, contained 19 separate requests for documents related to (i) "consumer and
28 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*

Request Nos. 32-38), (ii) “communications to and from consultants, experts, or specialists in the area of food labeling requirements (whether or not employed by Bimbo) concerning all of the products and labels at issue (*see* Request Nos. 41-46) and (iii) “actual, potential, estimated, or expected differences between consumer interest in or purchases of products that contain” and do not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the application of which was calculated to retrieve documents responsive to all of the foregoing requests. In accordance with those agreements, BBUSA undertook the very time-consuming and expensive task of gathering, processing and producing all responsive documents from its nationwide electronic databases and the agreed-upon custodians (BBUSA’s search was not geographically limited). All such documents have either been produced or withheld as privileged.

Because this request is duplicative of the above-referenced requests in the plaintiffs’ first set of document requests and the agreed-upon e-discovery search terms already employed by BBUSA would have captured all documents that are responsive to this request, BBUSA has already produced any non-privileged documents responsive to this request.

REQUEST NO. 23:

All documents specifically relating to consumer interests, opinions, or preferences regarding bread products with added coloring in California.

RESPONSE TO REQUEST NO. 23:

BBUSA hereby incorporates the above General Objections as if stated herein in full. BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly burdensome and seeks documents that are neither relevant to the subject matter of the pending litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action because the documents that it seeks expressly are not limited in scope or time. BBUSA also objects to this Request on the grounds that it seeks documents protected from disclosure by the attorney-client and/or attorney work product privileges.

Subject to and without waiving the foregoing objections, BBUSA responds as follows:

1 The plaintiffs' first set of document requests in this matter, which they propounded in
2 January 2014, contained 19 separate requests for documents related to (i) "consumer and
3 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
4 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
5 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
6 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
7 expected differences between consumer interest in or purchases of products that contain" and do
8 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
9 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
10 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
11 application of which was calculated to retrieve documents responsive to all of the foregoing
12 requests. In accordance with those agreements, BBUSA undertook the very time-consuming and
13 expensive task of gathering, processing and producing all responsive documents from its
14 nationwide electronic databases and the agreed-upon custodians (BBUSA's search was not
15 geographically limited). All such documents have either been produced or withheld as privileged.

16 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
17 set of document requests and the agreed-upon e-discovery search terms already employed by
18 BBUSA would have captured all documents that are responsive to this request, BBUSA has
19 already produced any non-privileged documents responsive to this request.

20 **REQUEST NO. 24:**

21 All documents pertaining to any efforts by Bimbo to market or advertise bread products
22 with added coloring in California in a different manner than in another part of the country.

23 **RESPONSE TO REQUEST NO. 24:**

24 BBUSA hereby incorporates the above General Objections as if stated herein in full.
25 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
26 burdensome and seeks documents that are neither relevant to the subject matter of the pending
27 litigation nor reasonably calculated to lead to the discovery of admissible evidence in this action
28 because the documents that it seeks expressly are not limited in scope or time. In addition,

1 because the plaintiffs are seeking to certify a California-only class of consumers, the named
2 plaintiffs are California residents, and all claims are asserted under California law, any documents
3 regarding marketing or advertising outside of California are neither relevant nor reasonably
4 calculated to lead to the discovery of admissible information. BBUSA also objects to this
5 Request on the grounds that it seeks documents protected from disclosure by the attorney-client
6 and/or attorney work product privileges.

7 Subject to and without waiving the foregoing objections, BBUSA responds as follows:

8 The plaintiffs' first set of document requests in this matter, which they propounded in
9 January 2014, contained 19 separate requests for documents related to (i) "consumer and
10 marketing surveys, research, or analysis" concerning all of the products and labels at issue (*see*
11 Request Nos. 32-38), (ii) "communications to and from consultants, experts, or specialists in the
12 area of food labeling requirements (whether or not employed by Bimbo) concerning all of the
13 products and labels at issue (*see* Request Nos. 41-46) and (iii) "actual, potential, estimated, or
14 expected differences between consumer interest in or purchases of products that contain" and do
15 not contain the labels at issue (*see* Request Nos. 64-69). Pursuant to those requests, the parties
16 entered into a Stipulated Electronic Discovery Protocol, which the Court entered as an order in
17 June 2014 (*see* Dkt. 92), and the parties agreed to a set of search terms and sources, the
18 application of which was calculated to retrieve documents responsive to all of the foregoing
19 requests. Indeed, the search terms were even broader than the foregoing requests, as they
20 included terms such as "advertise," "market," "purchase," "demand," "sales" and every possible
21 iteration thereof. In accordance with those agreements, BBUSA undertook the very time-
22 consuming and expensive task of gathering, processing and producing all responsive documents
23 from its nationwide electronic databases and the agreed-upon custodians (BBUSA's search was
24 not geographically limited). All such documents have either been produced or withheld as
25 privileged.

26 Because this request is duplicative of the above-referenced requests in the plaintiffs' first
27 set of document requests and the agreed-upon e-discovery search terms already employed by
28

1 BBUSA would have captured all documents that are responsive to this request, BBUSA has
2 already produced any non-privileged documents responsive to this request.

3 **REQUEST NO. 25:**

4 All documents on which any of Bimbo's expert witnesses or intended expert witnesses has
5 relied in preparing any report or other document intended to be submitted to the Court.

6 **RESPONSE TO REQUEST NO. 25:**

7 BBUSA hereby incorporates the above General Objections as if stated herein in full.
8 BBUSA further objects to the extent that this Request seeks documents related to consultants who
9 have not been disclosed by BBUSA in this matter, as any such documents are protected from
10 disclosure by the attorney-client and/or attorney work product privileges.

11 Subject to and without waiving the foregoing objections, BBUSA will produce all
12 documents in its possession, custody or control that are responsive to this request, to the extent
13 that such documents have been relied upon by experts that have been disclosed by BBUSA in this
14 matter, and to the extent that such documents have not already been produced.

15 **REQUEST NO. 26:**

16 All documents that were used or relied upon to answer any interrogatories that have ever
17 been served by Plaintiffs on Bimbo.

18 **RESPONSE TO REQUEST NO. 26:**

19 BBUSA hereby incorporates the above General Objections as if stated herein in full.
20 BBUSA further objects that this Request is vague, ambiguous, compound, overbroad and unduly
21 burdensome. BBUSA also objects to this Request on the grounds that it seeks documents
22 protected from disclosure by the attorney-client and/or attorney work product privileges.

23 Subject to and without waiving the foregoing objections, BBUSA responds as follows:
24 BBUSA has already produced all documents that are responsive to this request, aside from a
25 small subset of documents that BBUSA relied upon to answer the plaintiffs' third set of

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1 interrogatories. A portion of those documents has already been produced, and as indicated in
2 prior correspondence between counsel, the remainder will also be produced.

3
4 Dated: April 13, 2015

HOGAN LOVELLS US LLP

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6 By: /s/ Mark C. Goodman

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8 Mark C. Goodman
9 Attorneys for Defendant
10 Bimbo Bakeries USA, Inc.
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to this action. My business address is Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, CA 90067.

On April 13, 2015, I caused the foregoing document described as: **DEFENDANT'S RESPONSE TO PLAINTIFFS' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** to be served on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

- ☐ **BY MAIL.** I sealed said envelope and placed it for collection and mailing following ordinary business practices, by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below:
- ☒ **BY E-MAIL.** I served such document(s) in PDF format to the e-mail address(es) indicated following ordinary business practices.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the individuals listed below
- ☐ **BY OVERNIGHT SERVICE.** I caused such document to be delivered by overnight mail to the offices listed below by placing it for collection by UPS / Federal Express following ordinary business practices by my firm, to wit, that packages will either be picked up from my firm by UPS / Federal Express and/or delivered by my firm to the UPS / Federal Express office:
- ☐ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____ at Los Angeles, California.
- ☒ **(Federal)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on April 13, 2015, at Los Angeles, California.

Mae F. Chester

Print Name

Signature

SERVICE LIST

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